

Message Text

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FOR ARA, D AND L ONLY

E.O. 11652: GDS
TAGS: PFOV, SHUM, CI
SUBJECT: LETELIER/MOFFITT ASSASSINATION INVESTIGATION:
EXTRADITION

REFS: (A) STATE 112082 (B) SANTIAGO 3184

1. WE HAVE DISCUSSED ISSUE POSED IN REFTEL (A) WITH ALFREDO ETCHEBERRY. HE CONTINUES OF OPINION THAT CHILEAN COURTS WOULD CONSIDER ARTICLE 2 OF MONTEVIDEO CONVENTION, REQUIRING TRIAL OF NATIONALS WHEN EXTRADITION REFUSED, AS APPLICABLE -- DESPITE ARTICLE 21 OF CONVENTION AND FACT THAT EARLIER BILATERAL EXTRADITION TREATY REMAINS IN FORCE. ETCHEBERRY'S BASIC POINT IS THAT MONTEVIDEO CONVENTION NEITHER ABROGATES NOR MODIFIES BILATERAL TREATY BUT RATHER SUPPLEMENTS IT. IN ETCHEBERRY'S OPINION, CHILEAN COURTS WOULD NOT VIEW ABSENCE OF EXPLICIT STATEMENT ON SUPPLEMENTING FORCE OF MONTEVIDEO CONVENTION (LAST PART OF PARA 1 OF REFTEL (A) AS IMPEDIMENT TO THIS INTERPRETATION.

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2. INFORMAL TRANSLATION OF ETCHEBERRY'S MEMORANDUM
FOLLOWS:

--ARTICLE 21 OF CONVENTION OF MONTEVIDEO STIPULATES THAT "THE PRESENT CONVENTION DOES NOT ABROGATE OR MODIFY THE BILATERAL OF COLLECTIVE TREATIES WHICH AT THE PRESENT DATE ARE IN FORCE BETWEEN THE SIGNATORY STATES". IN THE

SAME MANNER, THE BUSTAMANTE CODE WAS RATIFIED BY CHILE WITH THE RESERVATION THAT THE TERMS OF PRESENT OF FUTURE CHILEAN LEGISLATION WOULD PREVAIL OVER THE BUSTAMANTE CODE IN CASES OF CONTRADICTION. (THE TERM "LEGISLATION" INCLUDES INTERNATIONAL TREATIES).

--NEVERTHELESS, THE SUPREME COURT OF CHILE HAS RULED THAT BOTH THE MONTEVIDEO CONVENTION AND THE BUSTAMANTE CODE ARE APPLICABLE AMONG SIGNATORY COUNTRIES IN THOSE RESPECTS THAT DO NOT CONTRADICT OR MODIFY TREATIES, BUT RATHER RESOLVE ASPECTS NOT CONTEMPLATED IN SUCH TREATIES.

--AS EXAMPLES OF SUPREME COURT DECISIONS OF RECENT YEARS MAINTAINING THIS POSITION WE COULD CITE: EXTRADITION OF JOSE ROJAS PORTOCARRERO (1962) (BILATERAL TREATY WITH PERU AND BUSTAMANTE CODE); EXTRADITION OF LUIS GAYAN CONTADOR (1965) (BILATERAL TREATY WITH BOLIVIA AND BUSTAMANTE CODE); EXTRADITION OF AMADEO GARCIA ZEPEDA (1955) (EXTRADITION REQUESTED BY GUATEMALA AND RESOLVED IN CONFORMITY WITH BUSTAMANTE CODE AND MONTEVIDEO CONVENTION); EXTRADITION OF MIGUEL ANGEL MORALES LOBO AND ANOTHER PERSON (1974) (BILATERAL TREATY WITH COLOMBIA AND MONTEVIDEO CONVENTION).

--IN OUR JUDGMENT, ARTICLE 2 OF THE MONTEVIDEO CONVENTION NEITHER ABROGATES NOR MODIFIES ARTICLE 5 OF THE BILATERAL TREATY BETWEEN CHILE AND THE UNITED STATES,
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GIVEN THAT IT ESTABLISHES THE SAME RULE: THE EXTRADITION OF NATIONALS IS DISCRETIONAL. THE MONTEVIDEO CONVENTION ONLY COMPLEMENTS OR ADDS TO THE BILATERAL TREATY WITH RESPECT TO A POINT THAT THE LATTER DOES NOT ADDRESS, AND IT DOES SO IN A MANNER THAT DOES NOT CONTRADICT THE TREATY.

--AS TO THE HANDING OVER OF CHILEAN CITIZENS IN RESPONSE TO FORMAL REQUESTS FOR EXTRADITION FROM FOREIGN STATES, THE MOST IMPORTANT DECISION OF THE SUPREME COURT IS "EXTRADITION OF ARMANDO GONZALES CONTRERAS (1961)", WHICH CONTAINS AN EXTENSIVE ANALYSIS TO JUSTIFY THE HANDING OVER OF A CHILEAN CITIZEN TO PERU BY MEANS OF EXTRADITION.

3. WE ARE POUCHING TEXT OF ETCHEBERRY'S MEMORANDUM TO ARA/AND/CH.
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